

Cultural heritage protection: a truly “global” legal problem?

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In the course of recent years, international legal efforts to safeguard cultural heritage have undergone two seemingly contrasting developments: on the one hand, the general public has expressed an increasing concern with regards to the protection of cultural heritage from destruction and looting, first in light of the conflicts in the [former Yugoslavia](#), [Afghanistan](#) and [Iraq](#), and most recently as a result of the acts of the [Islamic State in Iraq and Syria](#) and [Ansar Dine in Mali](#). On the other hand, UNESCO, the UN body with a mandate for the protection of cultural heritage, has faced increasing criticism not only from its [member States](#), but also from civil society and [academia](#). These critiques have been compounded by [recent calls](#) for the restitution of objects looted during the colonial period – which (although not necessarily always directed at UNESCO) indicate growing dissatisfaction amongst a range of societal actors with the current legal regime.

As such, whilst there have undoubtedly been [beneficial developments](#) which can be ascribed to cultural heritage law, there are a number of trends which call into question whether the legal regime is in need of adjustment, and perhaps whether [cultural heritage protection is a matter for \(international\) law at all](#). These developments thus raise a fundamental question: is cultural heritage protection a truly ‘[global](#)’ legal problem, which requires the intervention of the international community by virtue of public international law?

General consensus would seem to indicate that cultural heritage needs to be protected. The main problem seems to be: [by \(and for\) whom](#)? And how? Asking these questions requires us to – as Bénédicte Savoy suggests in her [inaugural lecture](#) at the Collège de France which formed the inspiration for this symposium – engage in a certain process of introspection and readjustment of our traditional doctrinal assumptions. This contribution examines one of these doctrinal assumptions: the central role given to universality within cultural heritage law, both in terms of the rhetoric used by UNESCO and other actors, as well as in international legal instruments developed to safeguard heritage.

Universality and cultural heritage protection

[Universality](#) has a long history within international law, which can be retraced today through the existence of concepts such as *jus cogens* norms and obligations *erga omnes*. In short, universality implies that certain ‘things’ – whether these are the use of force, climate change, or, indeed, cultural heritage – are a common interest of

the international community and therefore (should be) subject to international law. The manner in which this is achieved differs according to that which the international community seeks to regulate.

Such universalistic philosophies are at the core of international cultural heritage protection, although the precise expression of these philosophies has differed across the various moments of international law-making that have occurred over the past century. International legal instruments such as the [1954 Hague Convention](#) and the [1972 World Heritage Convention](#) posit that any damage to 'universal' heritage causes 'damage to the cultural heritage of mankind'. These instruments view the destruction of heritage as a grave loss to the international community, generally positing it as a common concern and granting protection to heritage of 'outstanding universal value' or of 'great importance to ... mankind'.

Similar invocations of the common concern of the international community can be found in the rhetoric employed by international institutions, such as the UN, UNESCO, and the ICC. When rationalising the need for international involvement, statements from officials of these organisations invariably emphasise the loss to the international community which occurs when cultural heritage is damaged or destroyed. However, when drawing upon what is undoubtedly the powerful vocabulary of universality, it pays to be wary of the pitfalls of such language. As [Martti Koskeniemi suggests](#), '[o]ne should be careful with those who speak in the name of humanity'. Vitally, in most situations, the territorial State remains the actor with the chief power to determine which heritage is of global import.

Thus, for example, the concept of 'outstanding universal value' at the heart of the World Heritage Convention has come increasingly under fire, as many sites have been nominated to the World Heritage List which [purportedly do not express outstanding universal value](#). In addition, in the course of paying heed to universality, the international community at times overlooks the risks this poses to [living heritage](#) and [human rights](#).

In short, it is evident that sustained analysis of the effects of universality on the practice of cultural heritage protection remains important in order to fully capture the intended and unintended effects of this mode of thinking on cultural heritage. Such critiques can be strengthened by approaches adopted by scholars working in TWAIL and critical legal studies, in addition to interdisciplinary approaches.

Cultural heritage protection as a global problem

However, these developments need not suggest that international legal protection of cultural heritage is a lost cause. On the contrary: there are a number of situations in which some degree of international involvement in the protection of cultural heritage is vital. The issue of 'colonial' looted heritage is one example in this regard: as the looted object is generally located in a different State than its country of origin, the issue becomes by its very nature an international problem. Similarly, the

international community has increasingly acknowledged that damage to heritage can moreover form a threat to international peace and security, as the Security Council [recognised](#) in [Resolution 2347](#) in 2017.

Issues also arise in countries where different types of heritage are valued by the majority and the minority, for example in the case of [indigenous peoples](#). In such situations, the language of international law, particularly when framed in terms of human rights, can provide an impetus to ensure the protection of the heritage of minorities within a given State. Simultaneously, the language of international criminal law provides an appropriate means to respond to situations where State actors or armed groups are wilfully damaging heritage, as has been visible in the ICC's Mali investigation and the prosecutions of [Al Mahdi](#) and [Al Hassan](#).

These illustrations provide a brief sketch of situations where international involvement is desirable to a certain extent. However, believing that cultural heritage protection is indeed a 'global' problem does require us to depart from one fundamental premise: that the protection of cultural heritage is a common good. Debate will of course doubtless remain as to the purpose of this protection: do we protect heritage for purely intrinsic reasons, or should heritage protection instead be instrumental in achieving other goals of the international community, such as [conflict resolution](#) or [economic development](#)?

In addition, heritage protection is also a 'global' problem in the truest sense: it is not only a matter for States, as the orthodox point of departure within international law dictates. Precisely because of its close connection to culture, an integral element of heritage protection is the meaningful involvement of individuals. While important first steps have been taken by [States and UNESCO in this regard](#), it is crucial to remain aware of the variety of factors which can complicate meaningful participation in heritage protection in order to guarantee continued support from those whose heritage the international community seeks to safeguard.

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